by the maker of a promissory note to the payee, by which the maker got possession of the note and held it until the Statute of Limitations had run, is actionable. *Cockrill v. Hall,* 65 Cal. 326.

FRAUDS, STATUTE OF—DEBT OF ANOTHER—ORIGINAL OR COLLATERAL PROMISE.—MECHANICS' AND TRADERS' BANK V. STETHEIMER, 101 N. Y. SUPP. 513.—*Held,* that where a bank refused to loan money to a corporation, whereupon the directors orally agreed with the bank that each one would guarantee their proportionate share of the amount of the loan, and the loan was then made, the promise of the directors was within the statute of frauds (Laws 1897, p. 510, c. 417, Section 21), as a promise to answer for the debt of another. McLaughlin, J., *dissenting.*

Whether the promise is within the statute depends on how the credit was given. *Clark on Contracts,* p. 68. If the credit was given exclusively to the promisor his undertaking was original. *Chase v. Day,* 17 John. 114; *Hartley v. Varner,* 88 Ill. 561. And likewise when, although the effect of the promise was to pay the debt of another, the leading object was not to become guarantor or surety but to subserve some purpose of his own, *Davis v. Patrick,* 141 U. S. 479, or where the promise is to indemnify the promisee against any liability which he may incur. *Jones v. Bacon,* 145 N. Y. 446; *Aldrich v. Ames,* 9 Gray 76. But where the promise is to indemnify the promisee against any loss he may sustain by reason of the default or miscarriage of a person under liability to him the promise is within the statute. *Nugent v. Wolf,* 11 Penn. 471; *Mallory v. Gillett,* 21 N. Y. 412. And in all cases the inquiry is whether such promise is independent of the original debt or contingent upon it. *Brown v. Waber,* 38 N. Y. 187.

HOMICIDE—TRIAL—INSTRUCTIONS—INVADING PROVINCE OF JURY.—LOGAN V. STATE, 43 So. REP. 10 (ALA.).—*Held,* that court is not invading the province of jury when he charges them that if they believe the defendant cursed deceased, and told him he was going to kill him and said this as soon as he saw deceased, and further, that defendant immediately after using such language, shot deceased, then defendant could not be acquitted on the plea of self-defense. Dowdell, Anderson and Denson, JJ., *dissenting.*

The jury are the sole determiners of controverted questions of facts, and instructions that the defendant was the aggressor is ground for reversible error as it invades province of the jury. *Watson v. State,* 82 Ala. 10. Charges which are abstract or invade the province of the jury, are improper. *Springfield v. State,* 96 Ala. 81. An instruction that, "if you believe from the evidence that the defendant brought on the difficulty for the purpose of stabbing deceased then there is no ground for self-defense and you cannot acquit him on that ground," is erroneous, in absence of any evidence to that effect. *State v. Smith,* 125 Mo. 2. But, although judges are not allowed to charge juries with respect to matters of fact, it does not prohibit them from determining and charging the jury as to whether there is any evidence in regard to the issue or tending to sustain a fact on which a conviction or judgment may depend. *People v. Welch,* 49 Cal. 174.

INSURANCE—PROOF OF LOSS—WAIVER DENIAL OF LIABILITY.—THOMPSON V. GERMANIA FIRE INS. CO., 88 PAC. REP. (WASH.) 941.—*Held,* that where there is an oral insurance contract, and the company, within the time written contracts provide for proving loss, denies liability on the ground that there is no contract, it waives proof of loss.